Meeting the Small Business Classification as Defined by the Small Business Administration

Issue:

This brief explains the verification requirement that an applicant provide documentation that it meets the classification of a small business as defined by the Small Business Administration (SBA).

(For purposes of this brief, Veteran applies equally to Service-Disabled Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulations:

38 CFR § 74.2(e) states that "[a]ny firm registered in the VetBiz VIP database that is found to be ineligible due to a SBA protest decision or other negative finding will be immediately removed from the VetBiz VIP database. Until such time as the…[Center for Verification and Evaluation (CVE)] receives official notification that the firm has proven that it has successfully overcome the grounds for the determination or that the SBA decision is overturned on appeal, the firm will not be eligible to participate in the 38 U.S.C. § 8127 program."

According to 38 CFR § 74.1, "…CVE applies the small business concern definition established by 48 CFR 2.101."

According to **48 CFR § 2.101**, a "[s]mall business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see 19.102). Such a concern is "not dominant in its field of operation" when it does not

exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity." (See 15 U.S.C. § 632.)

According to **13 CFR § 121.101(a)**, "SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for 'small business' concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS)."

According to **38 CFR § 74.13(d)**, "[i]f CVE determines that a concern may not qualify as small, they may directly deny an applicant for VetBiz VIP Verification or may request a formal size determination from the U.S. Small Business Administration (SBA)…"

What This Means:

- An applicant must meet the size standards established by the North American Industry Classification System (NAICS) Code(s) identified on its Vendor Information Pages (VIP) profile.
- If your firm has received a size determination of other than small from the SBA and it is in the process of applying for verification, CVE may request information demonstrating that it meets the size

- standards established by the NAICS Codes listed by the applicant on its VIP profile, which may include official documentation demonstrating that it has either overcome the grounds for the determination or the SBA decision has been overturned on appeal.
- If a participant receives a size determination of other than small from the SBA and it is currently registered in the VetBiz VIP database, CVE may remove the firm from the database until CVE receives official documentation demonstrating that the business has either overcome the grounds for the determination or the SBA decision has been overturned on appeal. Alternatively, CVE may issue a Notice of Proposed Cancellation (NOPC) on the basis that the participant no longer qualifies as a small business.
- If the applicant or participant has never received a size determination from the SBA, then it is up to the firm to self-represent on its VIP profile the appropriate NAICS Code(s).
- An applicant or participant should only list NAICS Codes on its VetBiz VIP profile in which it qualifies as small.
- During the verification process, CVE will review the documentation submitted to confirm whether the applicant meets the classification of a small business concern. Depending on the NAICS Code selected, size can be determined by gross receipts or number of employees.
- An applicant's or participant's average 3-year annual gross receipts must be equal to or less than the SBA size standard established under the NAICS Code(s) it has chosen. If the size standard of an applicant's or participant's NAICS Codes is based on the number of employees, CVE may review the firm's IRS Form 941(s) or business payroll records to determine the average number of employees, employed by the firm over the most recent 12-month period.

- If an applicant is denied because it does not qualify as a small business, it will have to provide evidence that it is in fact a small business concern as defined by the SBA.

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For more information about VA Small and Veteran Business Programs, visit http://www.va.gov/osdbu.

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